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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

EARL SIMPSON,

Defendant and Appellant.

E049413

(Super.Ct.Nos. FSBSS802492 &  
FELSS902299)

OPINION

APPEAL from the Superior Court of San Bernardino County. A. Rex Victor, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Richard Pfeiffer, under appointment by the Court of Appeal for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Lilia Garcia and Karl T. Terp, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Earl Simpson challenges the trial court's decision to commit him to the Department of Mental Health as a mentally disordered offender (MDO). In the alternative, Simpson argues the trial court should have considered placing him in a conditional release program rather than inpatient treatment. As discussed below, we affirm the trial court's judgment.

### **FACTS AND PROCEDURE**

In November 2002, Simpson was in custody at Chino State Prison for possessing stolen property. Simpson had delusions that a correctional officer had tried to poison his food. Simpson reacted by spitting on the officer. This crime, aggravated battery by gassing, qualified Simpson as an MDO.

On June 18, 2008, the People filed a petition for commitment as an MDO pursuant to Penal Code section 2970.<sup>1</sup> This matter was continued a number of times. On June 3, 2009, the People filed a second petition. The parties agreed that both petitions would be heard together as the 2009 petition. The trial took place on September 29, 2009.

The sole witness, Dr. Joshua Deane, was called by the People. Dr. Deane is a staff psychiatrist at Atascadero State Hospital, and is Simpson's treating physician. Dr. Dean prepared the forensic reports for both MDO petitions. Dr. Deane testified regarding the spitting incident, and stated that Simpson's delusion that he was being poisoned was consistent with his observations of Simpson. Dr. Dean diagnosed Simpson with

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise indicated.

“psychosis, NOS, bipolar disorder, schizo-affective disorder, bipolar type . . . . On top of that he has a consistent and thought disorder mainly delusional.”

At the conclusion of the trial, the court found that Simpson has a severe mental disorder that is not in remission and cannot be kept in remission without continued treatment in custody, and that the mental disorder represents a substantial danger to others. Under section 2970, the trial court ordered Simpson to remain committed to the Department of Mental Health. This appeal followed.

## **DISCUSSION**

### *1. MDO Finding*

Simpson argues the trial court erred when it committed him to the Department of Mental Health because the prosecution failed to provide sufficient evidence to support one of the statutory criteria for an MDO commitment: that by reason of the severe mental disorder, Simpson “represents a substantial danger of physical harm to others.” (§ 2972, subd. (c).)

#### *A. Standard of Review*

We view the entire record in the light most favorable to the judgment and determine whether it discloses substantial evidence to support the findings in the trial court. (*People v. Beeson* (2002) 99 Cal.App.4th 1393, 1398 (*Beeson*).)

#### *B. There Was Sufficient Evidence*

“Under the MDO law, continued treatment requires that the person satisfy certain criteria: that (1) he continues to have a severe mental disorder; (2) his mental disorder is not in remission or cannot be kept in remission without treatment; and (3) he continues to

present a substantial danger of physical harm to others.” (*Beeson, supra*, 99 Cal.App.4th at pp. 1398-1399; § 2972, subd. (c).)

Here, Simpson concedes the first two criteria: that he continues to have a severe mental disorder, and that the disorder cannot be kept in remission without treatment. Thus, we need only review the record for substantial evidence that Simpson “represents a substantial danger of physical harm to others.”

Dr. Deane testified that, even when Simpson’s manic mood problems are controlled by medication, “his delusion does not go away.” “[H]is delusional thinking is very much alive and well despite the medication that he’s taking” for his manic episodes. Simpson suffers from a number of “persecutory” illusions, including that the “hospital runs some sort of blood bank and collects the patient’s blood [for] profit,” which causes Simpson to refuse lab tests involving blood, and a persistent delusion that hospital staff are poisoning his food.

Simpson, who is African-American, also has displayed problems with persons of other races, which Dr. Deane described as an “ongoing issue with him.” In February 2008, Simpson became angry when a Caucasian patient was assigned to his room. Simpson stated that there would be a civil war and that blacks would take over. In March 2008, Simpson told a psychiatric technician that “I have killed before. I have no problem doing it again.” In May 2009, Simpson took offense when it was announced that patients would no longer be assigned to doctors based on race and threatened that “things are not going to go well.” At that time he also stated “if you put any whites or Mexicans in my dorm there are [*sic*] going to be a problem. If any staff puts their hands

on me, I'm not going to go down easy." In June 2009, a Hispanic patient sat at a table in the dining hall with Simpson and other African-Americans. Simpson and another patient followed the Hispanic patient to the latrine and had to be stopped from physically attacking him. A "red light had been activated to bring the situation into control."

In 2007, Simpson got into a fight in the county jail when he was brought to court for a hearing. In 2008, Simpson on several occasions accused staff at the hospital of poisoning his food, as he did when he committing the spitting offense in 2002. Simpson had a number of citations on his hospital record, including falsification of records, cursing staff, breaking glass (three times), attempted escape, equipment sabotage and theft. In addition, Dr. Deane commented that "[h]e certainly made a lot of verbal threats against the staff as well as the patients in the hospital." Dr. Deane was of the opinion that "many of his behaviors are driven by his distorted or impaired reality" and agreed that he would be "very impaired trying to function on his own in society."

Dr. Deane testified that one of the reasons Simpson would pose a substantial risk of danger to others if released is that he has a history of denying his mental illness and refusing treatment, and has displayed a pattern of discontinuing his medication without permission and over the objections of his doctors. As recently as "2006, 2007 and 2008" Simpson was "repeatedly placed under involuntary medication management."

Dr. Deane concluded, in his professional opinion, that Simpson was likely to pose a substantial danger of physical harm to others if released, that "he remains delusional" and "will not hesitate to use violence." He based this on Simpson's unabated delusional thinking, on Simpson's belief that he does not have a mental illness and his reluctance to

take his medication, and on Simpson's criminal history, which includes burglary, assault with a deadly weapon, and the spitting incident, as well as Simpson's acts of violence and threats of violence while in custody with the Department of Mental Health.

We find this evidence sufficient to support the trial court's order committing Simpson to the Department of Mental Health.

## *2. Conditional Release Program*

In the alternative, Simpson contends the trial court should have, *sua sponte*, committed him to an outpatient conditional release program rather than to inpatient treatment. This is based on Dr. Deane's testimony on both direct and cross-examination. On direct examination, Dr. Deane stated that he and other hospital staff "have approached [Simpson] and coached him to consider the Conrep, conditional release program, as one . . . discharge option. . . . In the Conrep system at least they would provide housing and provide medical and psychiatric care for those people who does [*sic*] not have otherwise any social support . . . ." On cross-examination, Dr. Deane expanded his description of the Conrep program and stated his opinion that "I think this will be a very good, if you will, transitional arrangement for him if he is to be released from [the] hospital."

There are two problems with this contention. First, although trial counsel on cross-examination elicited additional information on the Conrep program and its suitability for Simpson, counsel never asked the trial court to consider placing Simpson in the program. Thus, this contention is waived on appeal. Second, even if we were to consider this issue on its merits, the evidence clearly shows that a Conrep placement

would not be beneficial to Simpson or protect the safety of the public. This is because Simpson actually refused to contemplate such a placement when hospital staff “approached him and coached him” to consider it as a discharge option. If that were not enough, Dr. Deane testified that staff at the various Conrep programs might not accept Simpson if he continues to insist that he does not have a mental disorder and refuses to take medication voluntarily. For these reasons, the trial court did not err in failing to place Simpson in a transitional release program once it found he fit the MDO criteria.

**DISPOSITION**

The judgment of the trial court is affirmed.

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RAMIREZ  
P.J.

We concur:

RICHLI  
J.

MILLER  
J.